

Advice Memorandum

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DATE: July 18, 1994

TO : Victoria E. Aguayo, Regional Director
Region 21

FROM : Robert E. Allen, Associate General Counsel
Division of Advice

SUBJECT: Ayers Corporation 530-4080-5084
Case 21-CA-29761 530-8072-2800
530-8009-4400

This case was submitted for advice as to whether the Employer violated Section 8(a)(5) by refusing to provide information to the Union merely because of a decertification petition has been filed, in circumstances where a majority of employees signed the petition, unbeknownst to the Employer.

FACTS

On November 1, 1993, during negotiations for a successor agreement, the Union requested relevant information as to employees' earned leave. The Employer initially agreed to provide the Union with the requested information. On November 4, 1993, a decertification was filed in Case 21-RD-2518 in the unit represented by the Union. Eight of the 13 unit employees signed the petition. The heading of the petition stated: "We, the undersigned employees of Ayers Corporation do not wish to be represented by the Teamsters Union Local 986." The Employer asserts that it never saw the decertification petition that was circulated and presented to the Board, and that it was unaware of the number of employee signatures contained in the petition. Subsequent to the decertification petition, the Employer retained counsel. On November 16, the Employer sent a letter to the Union which stated in relevant part: "This afternoon you contacted me for the purpose of obtaining information relative to negotiations. In light of the fact that the employees have filed a decertification petition, we have reasonable doubt that the Union is supported by a majority of employees. Therefore, we will not be providing the requested information."

At no time has the Employer proffered any basis for its refusal to provide the information other than the filing of the decertification petition. To date, the Employer has not

provided the Union with the information and no further bargaining has been scheduled or held.

ACTION

We conclude, in agreement with the Region, that the charges should be dismissed, absent withdrawal.

An employer may withdraw recognition from a union if "it is able to show that the Union actually lost majority support, or that [it] had a reasonably grounded good-faith doubt, based on objective factors, concerning the Union's continued majority status."¹ However, "the mere filing of a decertification petition does not relieve the employer of its obligation with the union."²

In the instant case, it is clear, based on the wording of the decertification petition, that a majority of unit employees no longer desire to be represented by the Union and that the Union has, in fact, lost its majority status. Further, there is no evidence that the Employer committed any unfair labor practices which would undermine the Union's status. Although an employer's withdrawal of recognition must be based on objective evidence at the time of the withdrawal³ that the union no longer represents a majority of employees, and here the Employer did not have such objective evidence since it never saw the decertification petition, we agree with the Region that it would not effectuate the purposes of the Act to issue a bargaining order in circumstances where, as here, it is clear that the Union is no longer the majority representative.

Accordingly, the charges should be dismissed, absent withdrawal.

R.E.A.

¹ A.W. Schlesinger Geriatric Center, 304 NLRB 296, 300 (1991).

² W.A. Krueger Co., 299 NLRB 914, 916 (1990); A.W. Schlesinger Geriatric Center, 304 NLRB at 300.

³ See A.W. Schlesinger Geriatric Center, 300 NLRB at 300, where the Board noted that evidence obtained after the withdrawal of recognition is irrelevant to its determination as to whether the withdrawal was lawful.

